IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 413 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALLIANCE SYNTHETICS PVT. LTD.

Versus

BANK OF BARODA

Appearance:

1. Civil Revision Application No. 413 of 2001

MR UNMESH D SHUKLA for Petitioner No. 1

MR KI SHAH for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/12/2002

ORAL JUDGEMENT

#. The petitioner is the original plaintiff of Special Civil Suit No.91 of 1996, which is pending in the Court

of the Civil Judge (Senior Division), Bharuch. The petitioner has filed the aforesaid suit against the respondent bank for getting decree of Rs.1,08,07,700/-. The respondent bank has also initially instituted the suit, being Special Civil Suit No.51 of 1989, against the present petitioner for recovering its dues. The said suit of the bank is transferred to the Debts Recovery Tribunal in view of the establishment of the Debts Recovery Tribunal. The suit filed by the respondent is accordingly pending before the Debts Recovery Tribunal, Ahmedabad. During pendency of Special Civil Suit No.91 of 1996, which is instituted by the present petitioner, the petitioner gave the application for transferring of his suit to the Debts Recovery Tribunal, Ahmedabad on the ground that, in view of the amendment made to the Act in question, viz., The Recovery of Debts due to Banks and Financial Institutions Act, 1993, all the counter claims or set off against the dues of the banks are now required to be decided by the Debt Recovery Tribunal. The petitioner gave the aforesaid application on the ground that the suit filed by the petitioner is in the nature of counter claim, and, therefore, the suit of the plaintiff is required to be transferred to the Debts Recovery Tribunal. However, the learned trial Judge rejected the said application.

#. At the time of hearing of this revision application, Mr.Shukla, learned advocate, for the petitioner, has relied upon the decision of the Supreme Court in the case of United Bank of India, Calcutta Vs. Abhijit Tea Co.Pvt.Ltd., reported in (2000)7 SCC 357, wherein the Apex Court in paras 40 and 41 has observed as under.:

Para 40 :

"Sub-section (6) says that a "set-off", if claimed, can be adjudicated by the Tribunal. Sub-section (7) states that the written statement pleading a set-off shall have the same effect as a plaint in a cross-suit to be adjudicated by the Tribunal. Similarly, sub-section (8) of Section 19 permits a defendant to make a "counter-claim" by way of an application and sub-section (9) of Section 19 states that such a "counter-claim" shall have the same effect as a "cross-suit" so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim as a "cross-suit". Sub-section (11) of Section 19 is important and it permits the bank or financial institution, as the case may be, ought not to be disposed of by

way of a counter-claim but that the debtor must be directed to file an independent action. The Tribunal would then consider whether the debtor should be directed to file an independent action in regard to any part of the debtor's claim."

Para 41 :

"In our view, the Company's Suit No.272 of 1985 insofar claims a relief for specific performance, perpetual and mandatory injunctions, it is in substance in the nature of a counter-claim under sub-sections (8) to (10) of Section 19 and are in the nature of a counter-claim. The plea for deduction of damages is in the nature of a counter-claim. The plea for deduction of damages is in the nature of a set-off falling within Sections 19(6) and (7). Both are equated to cross-suits. If a set-off or a counter-claim is to be equated to a cross-suit under Section 19, a fortiori there can be no difficulty in treating the cross-suit as one by way of set-off and counter-claim, and as proceedings which ought to be dealt with simultaneously with the main suit by the Bank. In fact, the Bank has not objected to such a course. Indeed, Section 19(11) says that if any particular counter-claim raised in Suit No.272 of 1985 cannot be decided by the Tribunal while deciding the Bank's suit, the defendant may apply to the Tribunal for exclusion of such a counter-claim. But such a question does not arise in this case. In our view, in the context, the word "counter-claim" in Sections 19(8) to (11) which is equated to a cross-suit, includes a claim even if it is made in an independent suit filed earlier. An agreement not to charge interest, the specific performance of which is claimed is nothing but a plea that the Bank could not charge interest. A permanent injunction directing the Bank not to charge interest because of an alleged agreement in that behalf is likewise a plea that no interest is chargeable. So far as the plea for further financial assistance is concerned, it is also, broadly, in the nature of a "counter-claim". All these fall under Sections 19(8) to (10). Again, the plea for deducting "damages" though raised in the suit is indeed broadly a plea of "set-off" falling under sub-sections (6) and (7) of Section 19."

#. Considering the aforesaid aspect, in my view, the suit filed by the petitioner is required to be treated as if it is a "counter-claim" on the part of the petitioner in the suit filed by the bank. In view of the aforesaid position, the order of the trial Court is required to be set aside. Accordingly, the impugned order of the trial Court is set aside. The application submitted by the petitioner before the trial Court is allowed and the suit, being Special Civil Suit No.91 of 1996, is ordered to be transferred to the Debts Recovery Tribunal, Ahmedabad. After such transfer, the same to be heard with the suit filed by the respondent bank, being Special Civil Suit No.51 of 1989, which is transferred from the Civil Court, Bharuch. However, office of the Debts Recovery Tribunal may find out the new number of the said suit, if any, and, ultimately, both the proceedings are to be heard together. This revision application is allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Writ to be sent to the trial Court forthwith.

(P.B.Majmudar,J)
(pathan)